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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,157	02/03/2004	Steven J. Visco	PLUSP036	1887
22434	7590	02/06/2008		
BEYER WEAVER LLP P.O. BOX 70250 OAKLAND, CA 94612-0250			EXAMINER WILLS, MONIQUE M	
			ART UNIT 1795	PAPER NUMBER
			MAIL DATE 02/06/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/772,157

**Applicant(s)**

VISCO ET AL.

**Examiner**

Monique M. Wills

**Art Unit**

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-7, 14, 15, 22, 24-43, 46, 47 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 15-21, 23, 44, 45 and 48-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/4/07</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Response to Amendment*

This Office Action is responsive to the Amendment filed November 26, 2007. The following rejections are maintained.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 8-12, 15-21, 23, 44-45, 48-49 & 50-59 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2005/0100792 (Visco)

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

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the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Visco claims an electrochemical cell comprising: an active metal anode having a first surface and a second surface; a cathode structure comprising an electronically conductive component, an ionically conductive component, and an electrochemically active component, wherein at least one cathode structure component comprises an aqueous constituent; an ionically conductive protective membrane on the first surface of the anode, the membrane comprising, one or more materials configured to provide a first surface chemically compatible with the active metal of the anode in contact with the anode, and a second surface substantially impervious to and chemically compatible with the cathode structure and in contact with the cathode structure (Claim 1). The cathode structure employs water (par. 57). The anode material is lithium (par. 39). The protective membrane is a composite comprising first and second materials having identical compositions (ref. Claim 2) and the membrane has the same requisite ionic conductivity (par. 46). The membrane is a laminate (par. 15) and has a graded composition (par. 16). The first component is a composite reaction product of active metal with  $\text{Cu}_3\text{N}$ , active metal halides, active metal phosphides and active metal halides and active metal phosphorous oxynitrides (ref. Claim 10) or a composite reaction product of active material with  $\text{Cu}_3\text{N}$ ,  $\text{Li}_3\text{N}$ ,  $\text{Li}_3\text{P}$ , and  $\text{LiI}$ ,  $\text{LiBr}$ ,  $\text{LiCl}$ ,  $\text{LiF}$  and  $\text{LiPON}$  (ref. Claim 55) the instant glass ceramic compositions are the same (ref. Claim 57). The second composite comprises a material selected the group consisting of glassy or

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amorphous metal ion conductors, ceramic active metal ion conductors, and glass-ceramic active metal ion conductors (ref. claim 12) .

Therefore, the instant claims are anticipated by Visco.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 60-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visco U.S. Pub. 2005/0100792 in view of Gozdz U.S. Pub. 2001/0110728.

Visco teaches an active metal fuel cell as described herein above.

Visco does not expressly disclose that the cell is primary/rechargeable, planar or tubular.

However, Gozdz teaches that it is well known in the art to employ tubular and planar electrochemical systems.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to employ the tubular and planar configurations of Gozdz as the configuration for the Visco system in order to power electrical devices of varying shapes.

***Response to Arguments***

Applicant has submitted a new IDS and amendments to the specification, however it is unclear as to whether any claim amendments were entered. The remarks file November 26, 2007 have been considered and the Priority Disclaimer will be added to the specification accordingly. However, the rejections are maintained until new claim amendments are submitted.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Monique Wills whose telephone number is (571) 272-1309. The Examiner can normally be reached on Monday-Friday from 8:30am to 5:00 pm.

If attempts to reach Examiner by telephone are unsuccessful, the Examiner's supervisor, Patrick Ryan, may be reached at 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MW

1/28/08

  
PATRICK JOSEPH RYAN  
SUPERVISORY PATENT EXAMINER